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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re HAYLEE M. et al., Minors.

B196728

JAMES M.,

(Los Angeles County  
Super. Ct. No. CK53729)

Petitioner,

v.

THE SUPERIOR COURT OF THE STATE  
OF CALIFORNIA FOR THE COUNTY OF  
LOS ANGELES,

Respondent.

LOS ANGELES COUNTY DEPARTMENT  
OF CHILDREN AND FAMILY SERVICES  
et al.,

Real Parties in Interest.

ORIGINAL PROCEEDING; petition for writ of mandate. Marilyn H. Mackel,  
Temporary Judge. (Pursuant to Cal. Const. art. VI, § 21.) Petition denied.

Rafael Venegas for Petitioner.

No appearance for Respondent.

Raymond G. Fortner, Jr., County Counsel, and Tracey F. Dodds, Principal Deputy  
County Counsel, for Real Party in Interest Los Angeles County Department of Children  
and Family Services.

Children's Center of Los Angeles and Dwana Willis for Real Parties in Interest  
Haylee M., April M., and Gabriel M.

Petitioner James M.<sup>1</sup> seeks extraordinary writ relief<sup>2</sup> from the juvenile court's order setting a hearing pursuant to section 366.26 to consider termination of parental rights and implementation of a permanent plan for his three dependent children, Haylee M., April M. and Gabriel M. James M.'s petition is opposed by the Department and also by the three children, who have filed a joinder in the Department's response. We deny the petition.

## **FACTS AND PROCEDURAL BACKGROUND**

On April 4, 2005, a few days after April was born with cocaine in her system, the Department filed a petition under section 300 seeking to declare her and five-year-old Haylee court dependents. As sustained by the juvenile court on May 2, 2005 upon James M.'s and the mother's pleas of no contest, the petition included allegations James M. was a current user of cocaine and marijuana which rendered him incapable of providing regular care for the children, and had recently left three half siblings of the children at a police station without making provision for their ongoing care and supervision.<sup>3</sup> The court ordered the Department to provide family reunification services for both parents, and ordered James M. to participate in parenting classes, individual counseling, and drug rehabilitation with random drug testing. The court continued the case to October 31, 2005 for the six-month review hearing.<sup>4</sup>

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<sup>1</sup> Some of the juvenile court documents, as well as the instant petition and the response filed by the Department of Children and Family Services (Department), refer to petitioner as James M., Sr. For convenience, we refer to him as James M.

<sup>2</sup> Welfare and Institutions Code, section 366.26, subdivision (l); California Rules of Court, rule 8.452. All statutory references are to the Welfare and Institutions Code.

<sup>3</sup> Reports submitted to the court by the Department indicated James had abandoned the three siblings in front of a police station at 1:30 a.m. on April 4, and had done the same thing six months earlier at another police station.

<sup>4</sup> Section 366.21, subdivision (e).

In its report for the six-month review hearing, the Department indicated neither James M. nor the mother had contacted the Department's social worker or the children's caretaker, visited the children, or completed any of the court-ordered programs during the previous six months, and recommended termination of reunification services for the parents' failure to make any effort to reunify with Haylee and April. On October 31, 2005 the six-month hearing was continued to November 21 for the mother's contest, and the hearing was thereafter continued several times due to the illness of James M.'s counsel. On January 31, 2006 the parties stipulated to a continuance of the hearing to April 24, 2006 as the 12-month review hearing.<sup>5</sup>

The Department's report for the 12-month hearing indicated James M. had contacted the social worker just once during the previous six months, to request a bus pass, but he did not show up to pick up the pass. James M. had not enrolled in any of the court-ordered programs, had consistently missed drug tests, and had not visited the children. However, because the mother had recently enrolled in programs and showed a commitment to regain custody of the children, the Department recommended additional reunification services. At the hearing on April 24 the court continued the 12-month hearing to May 30 as to James M. for a supplemental report by the Department on his compliance with court-ordered programs and to obtain his drug test results, and set the case for the 18-month permanency planning review hearing<sup>6</sup> on October 24, 2006.

In a report submitted May 30, 2006 the Department stated that James M. had indicated he was enrolled in an outpatient substance abuse program, but he did not identify the program and the social worker had been unable to confirm James M.'s participation in any program. James M. continued to miss his drug tests. The Department further reported that the mother had given birth to a son (Gabriel M.) on April 27, and a voluntary family maintenance contract had been initiated as to Gabriel. On May 30 the court ordered reunification services continue to be provided to both

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<sup>5</sup> Section 366.21, subdivision (f).

<sup>6</sup> Section 366.22.

parents as to Haylee and April pending the October 24 permanency planning review hearing.

On July 19, 2006 the mother tested positive for cocaine. On July 26 the Department filed a petition under section 300 to declare Gabriel a court dependent. The petition indicated the Department may seek an order that reunification services not be provided to either parent. The juvenile court found James M. to be Gabriel's presumed father, ordered Gabriel detained, ordered James M. to participate in parenting classes, individual counseling, and drug counseling with testing, and set the jurisdictional hearing for August 21, 2006.

In its report for the jurisdictional hearing on the new petition, the Department indicated James M. had six children who had been made court dependents,<sup>7</sup> had not visited Haylee and April in five or six months, and had not addressed his substance abuse problems. James M. had told the social worker he had ended his relationship with the mother when April was born, and had not been around the mother very much because he was married to another woman during the entire time of his relationship with the mother. James M.'s current girlfriend, who had five children of her own, told the social worker she is a minister, she had been praying for James M., and "it was working" because James M. was sober and enrolled in counseling. The social worker had learned that James M. had enrolled in a program at the Children's Institute in March of 2006, where he had not submitted any dirty drug tests and had recently started the parenting portion of the program.

James did not appear on August 21, 2006 for the jurisdictional hearing on the new section 300 petition. The court sustained the petition as to the mother only, and set the matter for a contested dispositional hearing as to the mother and adjudication as to James M. On October 2 the court sustained the petition as to James M. and set the matter

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<sup>7</sup> Reunification services for James M. as to the three children he abandoned at a police station in April of 2005 had been terminated on April 24, 2006. James M. had not

for a contested dispositional hearing on October 24, 2006.

In a report submitted October 24 for the 18-month permanency planning review hearing as to Haylee and April, the Department stated that James M. was making good progress in his court-ordered programs, had consistently tested negative for drugs, had a stable relationship with his girlfriend, and was anxious to regain custody of Haylee, April, and Gabriel. The Department nevertheless recommended termination of reunification services because the case had reached the statutory limit for reunification, James M. had participated in programs only during the previous six months, and the children could not be returned to his care without a risk of detriment to their well-being.

In a supplemental report for the dispositional hearing as to Gabriel, the Department indicated James M. had contacted the social worker for Gabriel for the first time in September to ask about visitation and placement of his children. The social worker had concerns about James M.'s ability to care for Gabriel because James M. had a disability, lacked employment, had begun to comply with his case plan and to visit his children just recently, and lacked appropriate housing. The Department recommended denial of reunification services. On October 24, 2006 the permanency planning review hearing as to Haylee and April and the dispositional hearing as to Gabriel were continued to January 9, 2007.

On January 9, 2007 the Department submitted a supplemental report regarding Haylee and April, stating that James M.'s counselor at the Children's Institute had told the social worker James M. had failed to participate in programs between December 2005 and February 2006, but had participated consistently since March 2006, had submitted clean drug tests, and was taking responsibility for his drug addiction problem. The Department further reported that James M. had missed four of his six scheduled visits with his children between October and December of 2006, and when the social worker tried to interview him, James M. refused to discuss the case. On January 9, 2007 the case

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visited with those children since November of 2005, and told the social worker he did not mind if they were put up for adoption.

was continued to January 25 for a contested permanency planning review hearing as to Haylee and April and a contested dispositional hearing as to Gabriel. On January 25 the Department submitted a further report, indicating that James M.'s visitation with his children continued to be problematic.<sup>8</sup> The Department further reported that on several occasions James M.'s girlfriend had taken the telephone from James M. when the social worker was speaking with him, stating that she "is better" at discussing the issues than he is. The social worker believed James M.'s asserted interest in reunifying with his children might be principally due to his girlfriend's influence, and feared his interest would wane if the relationship were to end. The Department recommended that reunification services not be granted to James M. as to Gabriel.

The section 366.22 hearing for Haylee and April and the dispositional hearing for Gabriel commenced on January 25, 2007. Initially, evidence was presented pertaining to the hearing for Haylee and April. James M. testified he had missed just one visit with his children in 18 months, the visits had gone well, and he wanted the children returned to his custody. James M. further testified he was participating in a drug program at the Children's Institute, would graduate in March 2007, and had tested positive for drugs just once since he began testing. During cross-examination, James M. testified he was not sure how old Haylee and April were, when they were detained, or what grade Haylee was in.

When the hearing resumed on January 29, the court received evidence concerning the dispositional hearing as to Gabriel and additional evidence pertaining to the permanency planning review hearing for Haylee and April. One of the items admitted into evidence was a letter dated January 24, 2007 from the Children's Institute, indicating

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<sup>8</sup> There were several mix-ups as to the time scheduled for visits. On one occasion, the social worker arranged for a 7 p.m. visit for James M. with Haylee and April at a Burger King restaurant. The social worker and the foster mother arrived with the children at 6:50 p.m. but left when James M. had failed to arrive by 7:50 p.m. James M. later stated he thought the visit was scheduled for 6 p.m. and he was there, but he left at

James M. had just resumed attending a fatherhood program after a lapse of several months. The Department's social worker (Pelling) testified that although as of October 2006 James M. was participating and making progress in his programs, his visits with the children had not been liberalized because James M. had just started to visit the children, he missed four of his first seven scheduled visits, and the visits had never gone well. Pelling further testified that, based on her conversations with the foster parents, it was apparent James M. was more interested in regaining custody of Gabriel than Haylee and April. Pelling recommended reunification services for James be terminated as to Haylee and April and that services not be provided to him as to Gabriel, citing James M.'s inconsistent visitation record and the time limits imposed by law.

When he was recalled to the stand, James M. testified his failure to visit with Haylee and April for six months in 2006 was due to problems he had with the prior social worker, who gave him "the run around all the time."

At the conclusion of testimony, James M.'s counsel requested that Haylee and April be returned to him, and that Gabriel also be released to him or that James M. be granted reunification services. Counsel urged James M. was in substantial compliance with his case plan as to all three children, was gainfully employed, and had appropriate housing for the children. Counsel for the three children requested the court terminate reunification as to Haylee and April and deny reunification services as to Gabriel, citing James M.'s poor visitation record, lack of a relationship with the children, and failure to comply with his case plan until very late in the case. Counsel for the Department joined in the children's request.

After hearing argument, the court found that it would be detrimental to the safety and well-being of Haylee and April to return them to James M.'s custody. The court found that although James M. was in compliance with his case plan, "the major problem with this entire case . . . is [James M.'s] lack of involvement with his children and that

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6:30 p.m. when the others failed to arrive. However, Gabriel's foster mother reported that James M. visited with Gabriel the same evening at another location at 7 p.m.

lack of involvement would pose [a] substantial risk of harm to the children such that the court cannot return the children to his care or custody.” The court found the evidence showed that although James M. had complied with those components of the case plan that helped him with his own issues, he did not comply with the components designed to address parental awareness and to assist James M. in developing a relationship with his children. The court proceeded to find clear and convincing evidence that an order for reunification services would create a substantial risk of detriment to Gabriel’s well-being. The court noted James M. had failed to reunify with other siblings of Gabriel, and James M.’s inconsistent visitation record and poor attendance in a fatherhood program showed he had not made reasonable efforts to deal with the critical issue of lack of responsibility for his children. The court terminated reunification as to Haylee and April, denied reunification as to Gabriel, and set a section 366.26 hearing as to all three children.

## **CONTENTIONS**

James M. contends that because he had complied with his case plan, Haylee and April should have been returned to his care. James M. further contends there was insufficient evidence to support the court’s denial of reunification services as to Gabriel, who should have been released to him or placed in foster care with reunification services.

## **DISCUSSION**

- 1. Substantial Evidence Supports the Court’s Finding that Return of Haylee and April to James M. Would Create a Substantial Risk of Detriment to their Well-Being.**

At the 18-month review hearing the court must order a child’s return to his parent’s custody unless it finds, by a preponderance of evidence, that return of the child



will create a substantial risk of detriment to the child’s safety, protection, or physical or emotional well-being.<sup>9</sup> In this case, the record contains ample evidence to support the court’s finding of substantial risk of detriment.

When we review a sufficiency of the evidence challenge, we look only at whether there is any evidence, contradicted or uncontradicted, that supports the trial court’s determination. We resolve all conflicts in support of the determination, and indulge in all legitimate inferences to uphold the court’s order. Additionally, we do not substitute our deductions for those of the trier of fact,<sup>10</sup> and we have “no power to judge the effect or value of the evidence, to weigh the evidence, to consider the credibility of the witnesses, or to resolve conflicts in the evidence or the reasonable inferences that may be drawn therefrom.”<sup>11</sup> Nor is a parent’s compliance with his case plan the sole factor to be taken into account in determining whether there is a risk of detriment. The mere completion of the requirements of the reunification plan – such as participating in counseling and treatment programs and visiting the children – is just one consideration under the statute and the court must also consider to what extent the parent has ameliorated the conditions that required court jurisdiction.<sup>12</sup>

With this standard of review in mind, the court’s finding that the return of Haylee and April to James M. would create a substantial risk of detriment to their well-being is supported by substantial evidence. The record shows that after 21 months of reunification, principally as a result of his failure to visit them, James M. had not established any relationship with Haylee and April and was not even aware of their age or grade in school. Additionally, James M.’s failure to participate regularly in a fatherhood program left unresolved his problem of lack of responsibility and commitment to Haylee

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<sup>9</sup> Section 366.22.

<sup>10</sup> *In re Katrina C.* (1988) 201 Cal.App.3d 540, 547; *In re John V.* (1992) 5 Cal.App.4th 1201, 1212.

<sup>11</sup> *In re Stephen W.* (1990) 221 Cal.App.3d 629, 642.

<sup>12</sup> See *In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1139-1142; *In re Jasmon O.* (1994) 8 Cal.4th 398, 418-419.

and April. Under these circumstances, there was substantial evidence that as of the section 366.22 hearing, which is the statutory limit for reunification, James M. was unable to care for Haylee and April without a substantial risk of detriment to their well-being.

## **2. Reunification Services Were Properly Denied to James M. as to Gabriel.**

Recognizing that in certain categories of cases it is futile to provide reunification services, the Legislature has enacted provisions for “fast-track” permanency planning under certain circumstances.<sup>13</sup> One such situation is when reunification with a sibling has failed previously and the parent has not made a reasonable effort to treat the problems that led to the sibling’s removal from the parent’s custody.<sup>14</sup> Section 361.5, subdivision (b)(10) and (11) addresses the problem of recidivism by a parent despite reunification services by positing that a parent who has failed in one course of reunification is unlikely to succeed with a new round of services.<sup>15</sup> When a case falls within these provisions, “the general rule favoring reunification is replaced by a legislative assumption that offering services would be an unwise use of governmental resources;”<sup>16</sup> and the juvenile court lacks power to order reunification unless it finds by clear and convincing evidence that reunification is in the child’s best interest.<sup>17</sup>

The evidence in the record, as we have set forth, fully supports the juvenile court’s findings that reunification with Gabriel’s siblings had failed previously and James M. did not thereafter make a reasonable effort to treat the problems that led to the siblings’

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<sup>13</sup> See *Deborah S. v. Superior Court* (1996) 43 Cal.App.4th 741, 750-751; *Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 70-71.

<sup>14</sup> Section 361.5, subdivisions (b)(10), (b)(11).

<sup>15</sup> *In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 478.

<sup>16</sup> *Ibid.*

<sup>17</sup> Section 361.5, subdivision (c).

removal from his custody. James M. abandoned three older siblings of Gabriel at a police station, took no steps to regain custody of them, and reunification services for those children was terminated. Haylee and April were removed from James M.'s custody, James M. failed to visit them, reunification again failed, and on January 29, 2007 reunification services as to Haylee and April were also terminated. James M.'s failure to participate regularly in a fatherhood program constitutes further evidence that he did not make a reasonable effort to resolve his problem of lack of insight and responsibility for his children.

### **DISPOSITION**

The petition is denied on the merits.

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JOHNSON, Acting P. J.

We concur:

WOODS, J.

ZELON, J.